

OFFICE OF RECOVERY SERVICES FEE

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Aaron Tilton

LONG TITLE

General Description:

This bill requires the office of recovery services to establish fees to cover the costs of administering the child support program.

Highlighted Provisions:

This bill:

- requires every decree of divorce to include a provision assigning the fee when one or both of the parties are receiving child support services; and
- amends the definition of child support to include fees.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-5, as last amended by Chapter 176, Laws of Utah 2003

62A-11-104, as last amended by Chapters 90 and 176, Laws of Utah 2003

62A-11-304.2, as last amended by Chapter 60, Laws of Utah 2002

62A-11-401, as last amended by Chapter 161, Laws of Utah 2000

78-45-2, as last amended by Chapters 161 and 186, Laws of Utah 2000

ENACTS:

62A-11-304.6, Utah Code Annotated 1953



Be it enacted by the Legislature of the state of Utah:

Section 1. Section **30-3-5** is amended to read:

30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and parent-time -- Determination of alimony -- Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; ~~and~~

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services[-]; and

(e) provisions to include fees pursuant to Section 62A-11-304.6 as part of the support order when one or both parties are receiving child support services as defined in Subsection 62A-11-103(2).

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide

child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) Child support, custody, visitation, and other matters related to children born to the mother and father after entry of the decree of divorce may be added to the decree by modification.

(5) (a) In determining parent-time rights of parents and visitation rights of grandparents and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a parent-time or visitation schedule a provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(7) If a petition alleges substantial noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation or parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

(8) (a) The court shall consider at least the following factors in determining alimony:

(i) the financial condition and needs of the recipient spouse;

(ii) the recipient's earning capacity or ability to produce income;

(iii) the ability of the payor spouse to provide support;

(iv) the length of the marriage;

(v) whether the recipient spouse has custody of minor children requiring support;

(vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(g) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(9) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(10) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

Section 2. Section **62A-11-104** is amended to read:

62A-11-104. Duties of office.

The office has the following duties:

(1) to provide child support services if:

(a) the office has received an application for child support services;

(b) the state has provided public assistance; or

(c) a child lives out of the home in the protective custody, temporary custody, or custody or care of the state;

(2) to carry out the obligations of the department contained in this chapter and in Title 78, Chapters 45, Uniform Civil Liability for Support Act, Chapter 45a, Uniform Act on Paternity, and Chapter 45f, Uniform Interstate Family Support Act, for the purpose of collecting child support;

(3) to collect money due the department which could act to offset expenditures by the state;

(4) to cooperate with the federal government in programs designed to recover health and social service funds;

(5) to collect civil or criminal assessments, fines, fees, amounts awarded as restitution, and reimbursable expenses owed to the state or any of its political subdivisions, if the office has contracted to provide collection services;

(6) to implement income withholding for collection of child support in accordance with Part 4, Income Withholding in IV-D Cases, of this chapter;

(7) to enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system in the manner provided for in Section 62A-11-304.5;

(8) to establish and maintain the state case registry in the manner required by the Social Security Act, 42 U.S.C. Sec. 654a, which shall include a record in each case of:

(a) the amount of monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, late payment penalties, or fees, due or overdue under the order;

(b) any amount described in Subsection (8)(a) that has been collected;

(c) the distribution of collected amounts;

(d) the birth date of any child for whom the order requires the provision of support; and

(e) the amount of any lien imposed with respect to the order pursuant to this part;

(9) to contract with the Department of Workforce Services to establish and maintain the new hire registry created under Section 35A-7-103;

(10) to determine whether an individual who has applied for or is receiving cash assistance or Medicaid is cooperating in good faith with the office as required by Section 62A-11-307.2;

(11) to finance any costs incurred from collections, fees, General Fund appropriation, contracts, and federal financial participation; ~~and~~

(12) to establish fees pursuant to Section 62A-11-304.6; and

~~[(12)]~~ (13) to provide notice to a noncustodial parent in accordance with Section 62A-11-304.4 of the opportunity to contest the accuracy of allegations by a custodial parent of nonpayment of past-due child support, prior to taking action against a noncustodial parent to collect the alleged past-due support.

Section 3. Section **62A-11-304.2** is amended to read:

62A-11-304.2. Issuance or modification of administrative order -- Compliance

with court order -- Authority of office -- Stipulated agreements -- Notification requirements.

(1) Through an adjudicative proceeding the office may issue or modify an administrative order that:

- (a) determines paternity;
- (b) determines whether an obligor owes support;
- (c) determines temporary orders of child support upon clear and convincing evidence of paternity in the form of genetic test results or other evidence;
- (d) requires an obligor to pay a specific or determinable amount of present and future support;
- (e) determines the amount of past-due support;
- (f) orders an obligor who owes past-due support and is obligated to support a child receiving public assistance to participate in appropriate work activities if the obligor is unemployed and is not otherwise incapacitated;
- (g) imposes a penalty authorized under this chapter;
- (h) determines an issue that may be specifically contested under this chapter by a party who timely files a written request for an adjudicative proceeding with the office; ~~and~~
- (i) renews an administrative judgment~~[-]; and~~
- (j) establishes fees pursuant to Section 62A-11-304.6 as part of the support order when one or both parties are receiving child support services as defined in Subsection 62A-11-103(2).

(2) (a) An abstract of a final administrative order issued under this section or a notice of judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.

(b) Upon a filing under Subsection (2)(a), the clerk of the court shall:

- (i) docket the abstract or notice in the judgment docket of the court and note the time of receipt on the abstract or notice and in the judgment docket; and
- (ii) at the request of the office, place a copy of the abstract or notice in the file of a child support action involving the same parties.

(3) If a judicial order has been issued, the office may not issue an order under Subsection (1) that is not based on the judicial order, except:

- (a) the office may establish a new obligation in those cases in which the juvenile court

has ordered the parties to meet with the office to determine the support pursuant to Section 78-3a-906; or

(b) the office may issue an order of current support in accordance with the child support guidelines if the conditions of Subsection 78-45f-207(2)(c) are met.

(4) The office may proceed under this section in the name of this state, another state under Section 62A-11-305, any department of this state, the office, or the obligee.

(5) The office may accept voluntary acknowledgment of a support obligation and enter into stipulated agreements providing for the issuance of an administrative order under this part.

(6) The office may act in the name of the obligee in endorsing and cashing any drafts, checks, money orders, or other negotiable instruments received by the office for support.

(7) The obligor shall, after a notice of agency action has been served on him in accordance with Section 63-46b-3, keep the office informed of:

(a) his current address;

(b) the name and address of current payors of income;

(c) availability of or access to health insurance coverage; and

(d) applicable health insurance policy information.

Section 4. Section **62A-11-304.6** is enacted to read:

62A-11-304.6. Rulemaking authority -- Fees -- Restricted account.

(1) In accordance with Title 63, Chapter 46a, Administrative Rulemaking Act, the office may enact rules to charge fees necessary to fund the state's portion of the cost of administering the child support services program. Any fees implemented under this section shall comply with federal regulations under Part D of Title IV of the Social Security Act, 42 U.S.C. Section 651, et seq.

(2) Fees enacted under Subsection (1) may be charged to:

(a) noncustodial parents;

(b) custodial parents;

(c) legal guardians; and

(d) putative fathers.

Section 5. Section **62A-11-401** is amended to read:

62A-11-401. Definitions.

As used in this part and in Part 5:

(1) "Business day" means a day on which state offices are open for regular business.

(2) "Child" is defined in Section 62A-11-303.

(3) "Child support" means a base child support award as defined in Subsection 78-45-2(4), or a financial award for uninsured monthly medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, all arrearages which accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, ~~and~~ child care costs, and fees established under Section 62A-11-304.6. Child support includes obligations ordered by a tribunal for the support of a spouse or former spouse with whom the child resides if the spousal support is collected with the child support.

(4) "Child support order" or "support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a tribunal for child support and related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

(5) "Child support services" is defined in Section 62A-11-103.

(6) "Delinquent" or "delinquency" means that child support in an amount at least equal to current child support payable for one month is overdue.

(7) "Immediate income withholding" means income withholding without regard to whether a delinquency has occurred.

(8) "Income" is defined in Section 62A-11-103.

(9) "Jurisdiction" means a state or political subdivision of the United States, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, an Indian tribe or tribal organization, or any comparable foreign nation or political subdivision.

(10) "Obligee" is defined in Section 62A-11-303.

(11) "Obligor" is defined in Section 62A-11-303.

(12) "Office" is defined in Section 62A-11-103.

(13) "Payor" means an employer or any person who is a source of income to an obligor.

Section 6. Section **78-45-2** is amended to read:

78-45-2. Definitions.

As used in this chapter:

(1) "Adjusted gross income" means income calculated under Subsection 78-45-7.6(1).

(2) "Administrative agency" means the Office of Recovery Services or the Department of Human Services.

(3) "Administrative order" means an order that has been issued by the Office of Recovery Services, the Department of Human Services, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.

(4) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.

(5) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Section 78-45-7.14.

(6) "Child" means:

(a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) a son or daughter of any age who is incapacitated from earning a living and, if able to provide some financial resources to the family, is not able to support self by own means.

(7) "Child support" means a base child support award as defined in ~~[Section 78-45-2]~~ Subsection (4), or a monthly financial award for uninsured medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, all arrearages which accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, ~~[and]~~ child care costs, and fees established under Section 62A-11-304.6.

(8) "Child support order" or "support order" means a judgment, decree, or order of a tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise which:

(a) establishes or modifies child support;

(b) reduces child support arrearages to judgment; or

(c) establishes child support or registers a child support order under Title 78, Chapter 45f, Uniform Interstate Family Support Act.

(9) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Section 651 et seq.

(10) "Court" means the district court or juvenile court.

(11) "Guidelines" means the child support guidelines in Sections 78-45-7.2 through 78-45-7.21.

(12) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay. "Income" includes:

(a) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;

(b) interest and dividends;

(c) periodic payments made under pension or retirement programs or insurance policies of any type;

(d) unemployment compensation benefits;

(e) workers' compensation benefits; and

(f) disability benefits.

(13) "Joint physical custody" means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support.

(14) "Medical expenses" means health and dental expenses and related insurance costs.

(15) "Obligee" means an individual, this state, another state, or another comparable jurisdiction to whom child support is owed or who is entitled to reimbursement of child support or public assistance.

(16) "Obligor" means any person owing a duty of support.

(17) "Office" means the Office of Recovery Services within the Department of Human Services.

(18) "Parent" includes a natural parent, or an adoptive parent.

(19) "Split custody" means that each parent has physical custody of at least one of the

338 children.

339 (20) "State" includes any state, territory, possession of the United States, the District of
340 Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable
341 domestic or foreign jurisdiction.

342 (21) "Third party" means an agency or a person other than the biological or adoptive
343 parent or a child who provides care, maintenance, and support to a child.

344 (22) "Tribunal" means the district court, the Department of Human Services, Office of
345 Recovery Services, or court or administrative agency of any state, territory, possession of the
346 United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American
347 Tribe, or other comparable domestic or foreign jurisdiction.

348 (23) "Work-related child care costs" means reasonable child care costs for up to a
349 full-time work week or training schedule as necessitated by the employment or training of a
350 parent under Section 78-45-7.17.

351 (24) "Worksheets" means the forms used to aid in calculating the base child support
352 award.

Legislative Review Note

as of 2-16-05 11:54 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0340**Office of Recovery Services Fee***21-Feb-05**1:10 PM*

State Impact

This legislation authorizes, but does not require, the Office to enact rules to charge fees to replace some or all of State fund support. Total state support to the Office is currently about \$10.7 million. However, if enacted, approximately two-thirds of such collections would see a dollar for dollar reduction in federal support to the agency.

Individual and Business Impact

If increased fees are enacted, they would impact either the custodial or non-custodial parents, legal guardians or the putative fathers.

Office of the Legislative Fiscal Analyst